something for a stipulated reward, a stipulated *quid pro quo*..... I think that one must look at all the circumstances."

Mere payment for "oil" and petrol by the person for whose benefit the car was used was not hiring.

In the third case Uthwatt J. said:—

"It appears to me that a distinction falls to be drawn between the word 'hire' and the word 'reward'. The first word necessarily imports, I think, an obligation to pay. The inclusion of the second word is not, in my opinion, merely for the purpose of giving an alternative word to 'hire' meaning the same thing, but for the purpose of bringing in a subject-matter which does not include hire and including (I do not say it is confined to that) cases where there is no obligation to pay. ..... Whether [the accused] was carrying for reward ..... is a question of fact determined by all the circumstances of the case, including the length of time over which this course of conduct ..... has gone on; the nature of the payments made, namely cash; the exact amount of the payment, ..."

Applying the test used by Du Parcq L.J. in the third case, I do not think that on the evidence herein the learned Magistrate could have found that the accused was —

"carrying [the] two gentlemen as passengers, and that he intended to accept from them a payment which he expected to be tendered and which they intended to tender when he had given them their ride ....."

The accused received no cash and the petrol went into the car which belonged to some one else. The facts here are similar to the facts in the second case and unlike those in the first and third cases.

For the above reasons I allowed this appeal, quashed the conviction on all the charges (there were two) and set aside the sentence, the fine if paid to be returned to the accused.

Appeal allowed.

Re SOO-HOO HEM LENG

[O.C.J. (Hepworth J.) December 6, 1962]

[Penang — Originating Summons No. 117 of 1956]

Will — Devise to adopted son — No legal adoption — Death of adopted son — No ascertainable next-of-kin.

Bona vacantia — Whether his estate accrued to Government of Federation of Malaya.

By his will made in Penang one Soo-Hoo Hong devised certain immovable properties in Penang and Perak to his adopted son, Soo-Hoo Hem Leng, who disappeared in 1942 and had never been seen since. By an order of Court in 1952 it was ordered that the death of the said Soo-Hoo Hem Leng could be sworn to have occurred on or since September 2, 1942. The applicants, as administrators, took out this originating summon to ascertain whether the said Soo-Hoo Hem Leng died leaving any ascertainable next-of-kin and if there were none whether his estate accrued to the Government of the Federation of Malaya.

Held: (1) the law applicable in 1942 in Penang was English law according to which the Crown and now as a result of constitutional changes the Government of the Federation of Malaya was entitled to the property as *bona vacantia;*

(2) the law applicable in 1942 in Perak was the Federated Malay States Distribution Enactment according to which, if the intestate left no next-of-kin, his estate passed to the Federated Malay States Government as *bona vacantia*. By virtue of section 4 of the Transfer of Powers Ordinance, 1948, and section 30 of the Land Code, the reference to the Government of the Federated Malay States should be construed as the Government of the State of Perak.

ORIGINATING SUMMONS.

Ong Huck Lim for the applicants.

Wan Sulaiman bin Pawan Teh (Federal Counsel) for the Attorney-General.

Khoo Keat Siew for persons served under orders of Court dated November 25, 1957 and March 26, 1958.

J. B. Wilkinson for person served under Order of Court dated January 27, 1958.

Person served under Order of Court dated August 9, 1958 absent.

Cur. Adv. Vult.

Hepworth J.: By his will made at Penang one Soo-Hoo Hong *inter alia* devised houses No. 82, Main Road, Bagan Serai, Perak, and Nos. 117, 118, 119, 120 and 121, Jetty Road, Bagan Serai, Perak, to his sons, Soo-Hoo Chuan Leng and Soo-Hoo Hem Leng and his grandson, Soo-Hoo Sheow Yew in fee simple as tenants-in-common in equal shares. He also devised houses No. 4, Carnarvon Street, Penang, and No. 25, Toh Koyah Road, Penang, to the said Soo-Hoo Hem Leng.

The said Soo-Hoo Hem Leng was an adopted son having been adopted in 1923, but there was no evidence of any legal adoption proceedings having taken place, at any rate so far as this country is concerned.

Early in 1942, shortly after the Japanese occupation of Hong Kong, Soo-Hoo Hem Leng was taken to China by one Wong Foong Kiew, the second wife of the said Soo-Hoo Hong. On the 2nd September, 1942, the said Soo-Hoo Hem Leng disappeared and has never been seen since.

By an order of Court dated the 2nd May, 1952, made in Penang Originating Motion No. 17 of 1952 it was ordered that upon the application for a grant of letters of administration to the estate of the said Soo-Hoo Hem Leng the death of the said Soo-Hoo Hem Leng could be sworn to have occurred on or since the 2nd September, 1942. Letters of administration to the estate of the said Soo-Hoo Hem Leng were granted to the applicants on the 24th June, 1954.

The estate of the said Soo-Hoo Hem Leng, deceased comprises the devise of the property referred to above and this property or the proceeds thereof was valued at $21,550 for estate duty purposes. In addition there are accumulated rents which have been paid into Court.

The purpose of this originating summons is to ascertain whether the said Soo-Hoo Hem Leng died with any ascertainable next-of-kin and if there were none whether his estate accrues to the Government of the Federation of Malaya as *bona vacantia*.

As it is not claimed by any of the parties that there had been any legal adoption proceedings in this country it is necessary to decide what law is applicable, particularly because it is claimed that the adoption was legal according to Chinese law at any rate to the extent of entitling the first wife of the said Soo-Hoo Hong to a share in his estate.

It is to be noted that the property referred to is immovable property. It is common ground that the law prevailing in this country in 1942, the date that Soo-Hoo Hem Leng was presumed to have died, is the relevant law in this case. It is also common ground that the relevant law at that date in Penang was the same as that in England. It is also common ground that the relevant law at that date in Perak was the Federated Malay States Distribution Enactment (Cap. 71).

The law in Penang at that date was that the distribution of immovable property situated in Penang of a deceased intestate was regulated by the law of the *lex situs* and the law of the *lex situs* was that if there were no next-of-kin in such circumstances the Crown was entitled to the whole of the property as *bona vacantia*. By virtue of the various constitutional changes which have taken place since 1942 the Government of the Federation of Malaya has, in so far as the matters with which we are now dealing are concerned, taken the place of the Crown.

Subsection (ii) of section 4 of the Federated Malay States Distribution Enactment (Cap. 71) reads:—

"(ii) The distribution of the immovable property of a person deceased shall be regulated by this Enactment, wherever he may have had his domicile at the time of his death."

Rule No. 10 set out in section 7 of that Enactment provides that if the intestate leaves no next-of-kin, then subject to the rights of the widow or husband, if any, the Government of the Federated Malay States shall be entitled to the whole of the estate. The only question that now arises is what has taken the place of the Government of the Federated Malay States for the purposes of this Rule.

In the Transfer of Powers Ordinance, 1948, section 4 states:—

"4. The existing laws as varied by this Ordinance shall, in their application to any territory comprised in the Federation, be construed, when the context admits, subject to the following modifications —

.....

(b) references to the Federated Malay States shall be construed as references to the States of Negri Sembilan, Pahang, Perak and Selangor;

.....

(i) references to any officer of, or authority or body constituted in or for, the Federated Malay States, any Malay State, the Colony of the Straits Settlements, or the Malayan Union shall be construed as references to the corresponding officer of, or authority or body constituted in or for the Federation, or any Malay State or Settlement, as the case may require, and, for removal of doubt, the High Commissioner in Council may, from time to time, by Order declare who is the corresponding officer of, or authority or body constituted in or for the Federation, Malay State or Settlement as the case may be;

....."

At first glance it would seem to be a reasonable argument that the Government of the Federation of Malaya is the corresponding authority or body to the Government of the Federated Malay States. The important words of paragraph (i) however are, I think, "as the case may require." Reference to the Federated Malay States Land Code (Cap. 138), the land law operative in the State of Perak at all relevant times, shows that it is clearly contemplated in section 30 that if at any time there is no proprietor of any land surviving the entire property in and control of the land shall revert to and vest in the Ruler of the State and all title thereto of any person shall cease and be extinguished. In view of this provision this case in my opinion clearly requires that the reference to the Government of the Federated Malay States in subsection (ii) of section 4 of the Federated Malay States Distribution Enactment (Cap. 71) should be construed as the Government of the State of Perak. My attention has not been drawn to, nor can I find, anything in or arising out of the constitutional changes which took place in 1957 which requires any alteration to or variation of this construction.

In my opinion therefore the immovable property in Penang accrues to the Government of the Federation of Malaya and the immovable property in Perak accrues to the Government of the State of Perak as *bona vacantia*.

Order accordingly.

Solicitors: *Ong Huck Lim & Co.; Hogan, Adams & Allan; Presgrave & Matthews.*

Re SYED AHMED ALSAGOFF, DECD.

[C. A. (Rose C.J., Tan Ah Tah and Buttrose JJ.) December 14, 1962]

[Singapore — Civil Appeal No. 12 of 1962]

Estate Duty — Will — Net income of testator's property to be distributed annually during lifetime of last survivor of beneficiaries according to Muslim law and twenty years after — Whether estate duty to be borne by corpus of testator's estate or by that portion of corpus accruing to successors of deceased income beneficiary or by the general corpus of the estate.

The material provisions of the testator's will, made on December 30, 1868, provided that the net income from the testator's freehold and leasehold property was to be divided annually amongst his wife and children and their descendants according to the shares prescribed by Muslim law. The net income was to be distributed during the life-time of the last survivor of his children and more remote issue living at his death and for twenty years after the death of such survivor. The share of a male child was to be twice that of a female child. After the death of a child, the share payable to the child was to be paid to his or her children, a male child's share being twice that of a female child, and so on from generation to generation. If a descendant of the testator died without children, then his or her share was to devolve upon other descendants of the same degree. At the expiration of the period of twenty years the property was to be sold and the proceeds of sale were to be divided